IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4175 of 2001

Date of Decision: 29.10.2007

Giani Ram & Ors. ...Appellants

Vs.

Ompati & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Sanjay Majithia, Advocate,
for the appellants.

Mr.V.K.Jain, Senior Advocate,
with Mr.Prashant, Advocate,
for respondents No.1.

Vinod K.Sharma, J.

This regular second appeal has been filed against the judgments and decrees passed by the learned courts below decreeing the suit for declaration filed by the plaintiff-respondent No.1.

The plaintiff filed a suit for declaration to the effect that Munshi alias Handa and Ran Singh were entitled to inherit the estate of Chandu at the time of his death to the extent of half share each and mutation No.2126 was said to have been wrongly entered and sanctioned on

12.1.1979 by the Assistant Collector II Grade, Hansi in the name of Munshi alone. It was claimed that out of the land measuring 99 kanals 11 marlas Chandu had 1/4th share in Khewat No.161 and 1/40th share of land measuring 531 kanals 5 marlas comprised in Khewat No.167 as per Jmabandi for the year 1977-78. It was claimed that the plaintiff and proforma defendants No.6 and 7 were entitled to 1/240th share each of the share of Chandu who had 1/40th share in the suit land as detailed in the head-note of the plaint. They also claimed to be in possession of the same which now was comprised in Khewat No.189 Khatauni No.360 and 386 situated at village Narnaund District Hissar as per Jamaandi for the year 1987-88. The plaintiff along with proforma defendants also claimed 1/24th share each of 1/4th share of Chandu deceased in the land measuring 99 kanals 11 marlas which was said to be in possession of the plaintiff and now comprised in Khewat No.181 and Khatauni No.333/337 at village Narnaund Tehsil Hansi District Hissar. Mutation No. 2148 was also challenged which was sanctioned in favour of defendants No.1 to 5 and their mother qua the share of Chandu. The partition proceedings were also challenged to be without jurisdiction, null and void and not binding on the plaintiff. Rapat Roznamcha No.285 entered on 21.5.1992 was claimed to be a mere paper transaction. It was claimed that no possession was handed over in pursuance to the said Rapat Roznamcha and the plaintiff claimed herself to be a co-sharer in the Khewat in dispute. Injunction was also sought against defendants No.1 to 5 from alienating more than half share of the estate

alleged to have been inherited by Munshi from Chandu. The case of the plaintiff further was that one Kanshi had 5 sons. Chandu alias Chandgi Ram died issueless on 10.6.1975 and at that time his two brothers namely Munshi and Ran Singh were alive. Molu and Shiv Lal were said to have predeceased Chandu. The plaintiff along with defendants No.6 and 7 claimed to be son and daughter of Ran Singh who died on 30.10.1977. His estate was inherited by the widow and two sons. The case of the plaintiff further was that after the death of Ran Singh, Munshi Ram in collusion with the revenue staff got entered and sanctioned mutation of inheritance of Chandu in his favour, whereas in the year 1975 when Chandu alias Chandgi Ram died, his brother Ran Singh was also alive and had succeeded to inheritance of Chandu to the extent of ½ share i.e. half share by Munshi and half by Ran Singh. Thus, mutation in favour of Munshi alone was claimed to be illegal, null and void. The case of the plaintiff was that her mother had expired whereas the wife of Munshi also expired after the death of Munshi. Munshi is said to have died in the year 1979 and mutation of inheritance of Munshi was sanctioned in favour of sons, daughter and widow which includes the share of Chandu alias Chandgi Ram. The plaintiff claimed that she was an illiterate lady and was told by the heirs of Munshi and her brothers that her share in the estate of Chandu has been given to her. It was about a month ago that she came to know that brothers of the plaintiff have joined hands with the sons of Munshi to grab the share of the plaintiff which has been succeeded by her from the estate of Chandu alias Chandgi

Ram. Partition proceedings and mode of partition etc. by the Tehsildar were claimed to be illegal, without jurisdiction and non-est in the eyes of law and therefore, not binding on her. She claimed that she never appeared before the Tehsildar nor made any statement accepting the ownership of defendants No.1 to 5 as mentioned in the partition application. The plaintiff claimed still to be the co-sharer in the land in dispute. It was claimed that defendants had refused to accept her claim in the property.

Upon notice defendants No.1 to 5 appeared and filed written statement and raised preliminary objections claiming that the plaintiff had no locus standi to file the present suit. It was also claimed that she had no cause of action to maintain the suit in the present form. The suit was said to be time barred and it was claimed that the plaintiff was not in cultivating possession of the suit land which stood already partitioned. The suit was said to be bad for non-joinder and misjoinder of parties. The plea of estoppel was also raised. It was claimed that the plaintiff along with her sons i.e. proforma defendants No.6 and 7 accepted the ownership of defendants No.1 to 5. It was claimed that order of partition had attained finality. The defendants further claimed that civil suit for declaration filed by Ajit Singh against Giani Ram etc. was dismissed on 18.4.1990 and mutation regarding the inheritance of Chandu had already been sanctioned on 12.1.1979 in Jalsa Aam in the presence of Ajit Singh son of Shiv Lal and Parkash son of Ran Singh. It was claimed that the plaintiff had knowledge of the above said mutation and therefore, principles of res

judicata would be applicable to the present suit. The jurisdiction of the civil court was also questioned. It was claimed that the plaintiff had not come to the court with clean hands.

On merit the pedigree table was admitted. It was also admitted that Kanshi Ram had 5 sons and that Chandu alias Chandgi Ram died unmarried and issueless. However, it was claimed that at the time of death of Chandu alias Chandgi Ram, Ran Singh was not alive and it was only the father of defendants No.1 to 5 who was alive. It was claimed that after the death of Munshi the answering defendants became absolute owners in possession of the estate of Chandu. It was claimed that prior to his death, Chandu had effected a family settlement with the father of defendants No.1 to 5 and delivered possession of his share under the said family settlement. Therefore, it was claimed that mutation of inheritance was rightly sanctioned in Jalsa Aam. The plaintiff and proforma defendants were said to be having knowledge of the same. It was claimed that said mutation has been entered in the Jamabandi for the years 1982-83 and 1987-88. It was claimed that the plaintiff along with her brothers accepted the said mutation to be correct. It was claimed that after partition the plaintiff had no right or title in the above said land. The death of Ran Singh on 30.10.1977 was denied and it was claimed that he died much earlier than the date mentioned. It was also claimed that fabricated entry regarding death of Ran Singh on 30.10.1977 was made. It was the case of the answering defendants that at the time of death of Chandu, Ran Singh was not alive, therefore, his

right to succeed to the share of Chandu was denied and it was claimed that mutation sanctioned was proper. It was also the case of the contesting defendants that mutation of inheritance of Munshi was rightly sanctioned in favour of defendants No1. to 5. It was also claimed that mutations of inheritance of Chandu and Shiv Lal were sanctioned in the presence of plaintiff and proforma defendants and they had thorough knowledge of the same. On these allegations the plea of estoppel was raised. It was denied that the plaintiff never appeared before the Assistant Collector or that she had no knowledge of the partition proceedings. It was claimed that the plaintiff along with her brothers had compromised the proceedings and partition was based on compromise. It was claimed that possession of the land was delivered to the defendants on 21.5.1992, on the basis of partition proceedings and therefore, claimed that the suit be dismissed.

Defendants No.6 and 7, however, admitted the claim of the plaintiff.

Replication was filed wherein assertions made in the plaint were reiterated and that of written statement were denied.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff through her father had inherited a share in the estate of Chandu deceased if so to what extent? OPP
2. Whether mutation No.2148 sanctioned in favour of

defendants No.1 to 5 and their mother is illegal and not binding on the rights of the plaintiffs? OPD

3. Whether the partition proceedings as impugned in the plaint are illegal, and not binding on the rights of the plaintiff? OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is time barred? OPD
7. Whether the suit is not maintainable in present form? OPD
8. Whether the civil court has no jurisdiction to try the present suit? OPD
9. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
10. Whether the plaintiff is estopped from filing the suit by her own act and conduct as alleged in preliminary objections? OPD
11. Whether the suit is barred by principles of res judicata as alleged in para No.8 of the preliminary objections? OPD
12. Whether the partition proceedings have become final between the parties, if so that what effect? OPD

13. Whether the suit is collusive and has been filed at the instance of Tek Chand and Om Parkash defendant No.6 and 7? OPD
14. Whether the plaintiff has not come to the court with clean hands? OPD
15. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
16. Relief.

Learned Trial Court on appreciation of evidence decided issues No1 and 2 in favour of the plaintiff. It was held that the plaintiff was entitled to succeed to the share of deceased Chandu after Ran Singh and mutation under challenge vide which the whole of share of Chandu was sought to be inherited by Munshi excluding Ran Singh was held to be illegal, null and void and not binding on the rights of the plaintiff. Mutation of inheritance of Munshi was also held to be illegal, null and void and not binding on the rights of the plaintiff to the extent vide which share of Chandu was shown to have been inherited by the defendants. It was also held that the plaintiff and proforma defendants No.6 and 7 were entitled to 1/240th share each of the 1/40th share of Chandu in Khewat No. 167 and 1/24th share of 1/4th share of Chandu in Khewat no.161. Issue No.3 was also decided in favour of the plaintiff and it was held that the partition proceedings were illegal and not binding on the rights of the plaintiff. Issues No.4 and 5 were decided against the plaintiff, whereas on issue No.6 it was

held that as the plaintiff was in possession as co-sharer, she was claiming declaration on the basis of her preexisting right in the suit land on the basis of her own right to inherit the property of Chandu through her father the suit was time barred. Issue No.7 was also decided against the defendants and it was held that the suit as framed was maintainable. Issues No.8 and 9 were decided against the defendants as no evidence was led to show as to how the court did not have jurisdiction to entertain and try the present suit. Issue No.10 was also decided against the defendants as they failed to lead any evidence in support of their plea of estoppel. Issue No.11 was decided against the defendants being not pressed, whereas on issue No.12 it was held that final partition proceedings was of no legal consequence. Issue No.13 was also decided against the defendants. Similarly issue No.14 was decided against the defendant-appellants being not pressed. In view of the findings recorded above the suit filed by the plaintiff was decreed.

The appeal filed by the appellant-defendants against the judgment and decree of the learned trial court was dismissed by the learned Additional District Judge, Hissar.

Mr.Sanjay Majithia, learned counsel appearing on behalf of the appellants challenged the judgments and decrees passed by the learned courts below on the contentions that the partition proceedings between the parties were completed vide Ex.D.2 on record and mode of partition was affirmed on 18.12.1996 in view of the compromise Ex.D.3. Instrument of partition was prepared on 23.5.1991 and Rapat Roznamcha regarding

delivery of possession was entered on 21.5.1992. Warrant of possession was brought on record as Ex.D.44. It was claimed that under section 118 (2) of the Punjab Land Revenue Act (for short the Act) mode of partition could be challenged in appeal and in case the same is not challenged the same becomes final.

It was claimed that partition proceedings cannot be called into question in view of section 158 (2) of the Act and in support of this contention reliance was placed on the judgment of this court in the case of **Pritam Singh Vs. Jaskaur Singh 1992 PLJ 435** and in the case of **Lala Ram Vs. The Financial Commissioner, Haryana, Chandigarh 1992 (I) Revenue Law Reporter, 85** wherein this Court has been pleased to lay down that the suit to challenge the order of Assistant Collector alleging that the Assistant Collector did not follow the procedure for deciding the question of title, and therefore, the order is illegal and without jurisdiction is barred under section 158 (2) of the Act. However, it may be noticed that before the learned Trial Court issue No.8 was framed regarding the jurisdiction of the civil court to try the suit. However, the appellant-defendants failed to show anything in this regard. Even before the learned lower appellate court no such plea as raised in this court was taken. Learned lower appellate court was pleased to reject the plea of partition by observing as under:-

> "20. As per my discussion above there is nothing to show that Om Pati was duly served in he partition proceeding. There is

also no evidence that she has engaged Kuldeep Singh Advocate. There is no evidence on the file to show that she had executed power of attorney in favour of Tek Chand thereby authorizing him to make statement on her behalf. Moreover, as mentioned above the compromise was not signed by all the parties even statement were not made by all the parties before the AC II Grade, Hansi. The compromise as well as statements made by some of the parties cannot bind the remaining parties, who had not singed the compromise and also not made statement in the court thereby admitting the factum of compromise. Hence I have no hesitation to hold that Sanad Taksi Ex.D4, mutation No.285 and subsequent proceeding thereby delivering the possession of suit property on the basis of Sanad Taksim are illegal nul land void.

21. The plaintiff-respondent No.1 was also not required to challenge the partition proceeding by way of filing of appeal or revision as the order is nonest in the eyes of law qua the plaintiff. The party adversely effected by an illegal, null and void order has a remedy to challenge the same in the civil court. Reliance can be placed upon Harbans Singh Vs. State of Punjab, 1978 P.L.J. 261. According to the partition proceeding, Sanad Taksim Ex.D.4, mutation No.285 are illegal null and void and liable to be set aside. Suit land measuring 99

> kanals and 11 marlas is accordingly jointly owned and possessed by the parties to the suit and cannot be said to have been partitioned in consequence of declaring the partition proceeding to be illegal null and void and setting aside the same."

Thus, I find no force in the contentions raised by Mr.Sanjay Majithia, learned counsel appearing for the appellants to contend that the jurisdiction of the civil court was barred. The authorities relied upon by the learned counsel for the appellants, thus, have no application to the facts of the present case as in the present case a concurrent finding of fact has been recorded that the plaintiff was not served in the partition proceedings and therefore, learned courts below were right in deciding the issue of jurisdiction in favour of the plaintiff-respondent.

Learned counsel for the appellants also claimed that onus to prove that partition proceedings were not binding on her was on the plaintiff and therefore, it was for her to discharge the same which she failed to do. However, this plea also does not impress this court as it was the claim of the defendant-appellants that the suit filed by the plaintiff was barred due to finalization of the partition proceedings in which she had to participate. The plaintiff-respondent had discharged her onus by leading evidence to show that she was not present at the time of partition proceedings nor she was served qua the same and therefore, the concurrent finding recorded by the learned courts below cannot be interfered with in

regular second appeal on the basis of presumption as is sought to be contended by the learned counsel for the appellant.

Mr.Sanjay Majithia, learned counsel appearing for the appellants thereafter contended that in view of the finalization of the partition proceedings which have attained finality the suit filed by the plaintiff was barred on the principles of res judicata.

It may be noticed here that issue no.11 was framed on the plea of the appellant-defendants that the suit filed by the plaintiff was barred by principles of res judicata. However, no arguments were advanced by the learned counsel for the defendant appellants on this plea and this issue was decided against defendant-appellants. Even before the learned lower court no such plea was taken. It is therefore, not open to the appellant-defendants to raise this plea in this court for the first time without the same having been challenged before the courts below.

It was finally contended by the learned counsel for the appellants that the suit filed by the plaintiff-respondent was barred by limitation. It was contended that the mutation was sanctioned in the year 1979 and partition proceedings had also attained finality and therefore, the suit filed after 3 years was barred by limitation. In support of this contention reliance was placed on the judgment of this court in the cases of **Telu Ram and another Vs. Ram Kishan and others 1991 PLJ 672** and **Sarupa and others Vs. The Panchayati Akhara, Kala Bara Udasian, Thanesar and others (1998-2) Punjab Law Reporter 713**. However, the reading of

the said judgments shows that limitation of three years is to reckon from the date of knowledge. In the suit it was clearly asserted that the suit was well within the limitation from the date of knowledge. Issue No.6 was framed by the learned courts below on this plea of the defendant-appellant. Learned trial court recorded a finding that the present suit was filed for possession on the basis of inheritance for which no period of limitation was prescribed. Learned courts below recorded a finding that the plaintiff-respondent was claiming declaration being in possession as co-sharer and the base for such declaration was her preexisting right on the suit land on the basis to inherit the property of Chandu through her father. Similarly the learned lower appellate court has also been pleased to reject this plea by observing as under:

> "25. The suit for declaration is not barred so long as plaintiff's right is subsisting. Inheritance does not remain in abeyance and after death of last male holder, his heirs succeed the estate in accordance with law. The heirs are not required to file a suit to establish their right as heirs. However, when the rights are jeopardized the co-owner can file a suit for declaration as the declaratory decree merely recognizing the pre-existing right. The plaintiff is a co-sharer in the suit property and she has filed the present suit of declaration thereby challenging the mutation of inheritance of Chandu by giving recognition to her pre-existing right in the suit land. The suit land is still jointly

owned and possessed by the parties to the suit, therefore, plaintiff has a continuing cause of action to file the suit as and when her rights are threatened There is nothing to show that plaintiff-respondent was present when the mutation of inheritance was sanctioned. She was also not properly represented in the partition proceeding. Hence the present suit is not time barred."

Nothing was pointed out as to how these findings were bad in law. It may be noticed that in the present suit the property was claimed by the appellant-defendants primarily on the plea that Ran Singh had died prior to Munshi. This finding of fact has been recorded against the appellant-defendants and therefore the plaintiff had a right to inherit the property of Chandu and the learned courts below have decreed the said claim.

Thus, it may be noticed that the present appeal does not raise any substantial question of law and it is not open to the appellant-defendants to challenge the concurrent finding of fact recorded by the learned courts below on appreciation of evidence or raise any new pleas which were not pressed before learned Courts below.

Consequently, finding no merit in the present appeal the same is ordered to be dismissed in limine.

(Vinod K.Sharma)
Judge

October 29,2007
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